



STATE OF WASHINGTON

STATE BUILDING CODE COUNCIL

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MINUTES STATE BUILDING CODE COUNCIL

Date: July 9, 2009

Location: Senate Hearing Room 2, Olympia

Council Members Present: Peter DeVries, Chair; Jon Napier, Vice Chair; Ray Allshouse; John Chelminiak; Kristyn Clayton; John Cochran; Mari Hamasaki; Angie Homola; Tom Kinsman; Bob Koch; Jerry Mueller; Tien Peng; Dale Wentworth; Bruce Dammeier

Council Members Absent: Don Jordan

Visitors Present: Kraig Stevenson, Brian Minnich, Eric Lohnes, Diane Glenn, Gregory Staats, Tom Nichols, Kate Tate, Mike Cockrill, Sandy Howard, Javad Maadanian, Jeanette McKague, Michael Schoonover, John Hogan, Pete Crow, Paul O'Connor, Chuck Murray, Kim Drury, Mike Matlick, Tony Usibelli, Scott Jones, Harry Indig, Maureen Traxler, Gary Nordeen

Staff Present: Tim Nogler, Krista Braaksma, Joanne McCaughan, Sue Mathers, Sandra Adix

CALL TO ORDER

Chairman DeVries called the meeting to order at 10:01 a.m. Peter welcomed everyone. Introductions were made.

REVIEW AND APPROVE AGENDA

The agenda was reviewed and approved as written.

REVIEW AND APPROVE MINUTES

The minutes of the June 11th Council meeting were reviewed and approved as written.

Peter announced that the purpose of today's meeting is to move forward with the reports on the agenda. This meeting is not a public hearing. Public hearings to review all code change proposals will be held September 10th at the Renton Holiday Inn Select and September 17th at the Spokane City Hall.

PUBLIC COMMENT ON ITEMS NOT COVERED BY THE AGENDA

Mike Schoonover, Washington State Commercial Association of Realtors

I also sit on the National Association of Realtors' Federal Land Use, Property Rights and Environment Committee. We had a meeting on Tuesday, at which we talked about House Resolution 2454 that just passed the federal Congress, the American Clean Energy and Security Act, aka the Cap & Trade Bill.

One of the issues brought to our attention there, that I think this council might want to know about in advance of your decisions today, is that bill, that's now going to the Senate, creates a federal national building code standard that everyone thinks is going to be the IECC Standard basically. But it also gives the federal government, if a state doesn't bring its codes into compliance with federal building codes within one year, the right to step in, write and oversee building codes. In other words, there would be federal, rather than state and local, building inspectors.

My worry is that if Washington adopts some building codes that are kind of out there, away from the norm, not following where the IECC is going, Washington may not only have to do two major changes in its building codes during the next three years. The federal government may step in and take control away from the state. Once the feds are in, getting rid of them may be a problem.

COMMITTEE REPORTS

Building, Fire and Plumbing Codes Committee

John Cochran said the BFP Committee yesterday focused on Seattle's local amendment to the Existing Building Code. It recommends that Seattle proceed with preparing a formal local amendment proposal, noting strikethroughs and underlines, with consideration of Tom Kinsman's July 7 response to Seattle's request.

John said previously the BFP Committee recommended forwarding TAG reports with amendments to the Council and public hearings.

Kristyn Clayton, Chair of the Energy Code TAG, called for a point of order on a suggestion, discussed yesterday at the BFP Committee, to adopt Chapter 11 of the IRC as the energy code for residences. After checking all her files, Kristyn wonders how this suggestion entered the rulemaking process as a bona fide proposal or amendment. She would like to see the paper trail

of its formal entry into rulemaking. Kristyn questions whether legal Council action can be taken on this suggestion, unless it can be shown that it entered the process properly and has been carefully considered by the Energy Code TAG.

Kristyn said despite energy code issues historically always being referred to the Energy Code TAG by the Council, that TAG was not apprised of this suggestion. It entered into the system quietly and without any referral to the Energy Code TAG for review. She wonders why the history of Energy Code TAG referrals for energy code related issues has suddenly been ignored in this instance.

Peter asked Tim if the proposal meets all the legal requirements and timelines. Tim said, at the first meeting in January 2009, the Council discussed two options for rulemaking, based on the delayed publication of 2009 codes and the anticipated volume of energy code proposals this year. The Council, after conferring with legal counsel, chose to move the submission date from March 1 to April 1 for all model codes and the UPC. The March 1 submission date was retained for the WSEC.

Tim said the proposal to adopt Chapter 11, energy efficiencies, was submitted as a change to the IRC. He said the question the Council now has to decide is if this proposal changes the residential code, with an April 1 deadline, or the energy code, with a March 1 deadline. Tim said his initial response was that it amends the energy code and doesn't meet the appropriate deadline. However the proponents disputed that, saying it amends the IRC. Kristyn said at the May 12 IRC TAG meeting, 27 code change proposals and nine existing state amendments were listed as the TAG's workload. The Chapter 11 suggestion was not included. In fact, she said there is a proposal to adopt the 2009 IRC specifically excluding Chapter 11. Kristyn doesn't see this suggestion entering the system by even April 1. She said arguably it significantly amends not only the WSEC but legislation that gives the WSEC Chapters 1-10 for residential. Tim said the proposal was received prior to April 1. Kristyn noted that the first date she received any information about the proposal was in June.

Peter asked Tim if executive session is appropriate. Tim said he wouldn't recommend it at this time. Peter asked for discussion by Sandra Adix, Assistant Attorney General representing the Council. Sandra said executive session is only appropriate if it includes advice regarding legal action that might ensue about this proposal. She said there is a very narrow range of reasons why the Council can go into executive session. She's not sure it's entirely appropriate in this instance.

Sandra said her understanding is that the proposal is to adopt Chapter 11 of the IRC in place of some portions of the WSEC as it relates to residential. Her assessment is that this proposal amends both codes, the IRC and the WSEC. She said the question for the Council is what the substantial effect of this proposal is. If the Council views it as substantially affecting the energy code, the Council may want to analyze it under the timeline for submission of revisions to the energy code. Candidly speaking, Sandra said the proposal doesn't entirely, solely pertain to the IRC. She noted that N1101.1 states "This chapter regulates the energy efficiency for the design and construction of buildings regulated by this code. Chapter 11 of this code shall be known as the "Washington State Residential Energy Code."..." She said it looks like an energy code proposal as submitted.

On the other hand, if the Council views the proposal as simply amending the IRC, Sandra asked what then happens to the existing WSEC. She cautioned the Council about setting up conflicting code provisions. She suggested choosing energy code provisions for residential in either the WSEC or the IRC, but not in both.

Representative Dammeier said it sounds like a reasonable person could arrive at either interpretation. Sandra agreed that it would be possible to go either way. She said while she thinks either discretionary decision could be challenged, she's more comfortable defending the position that the proposal modifies the energy code. Representative Dammeier suggested forwarding the proposal to public hearing and thereby allowing time for further deliberation. Angie commented that the most obvious reason not to do so is because the Energy Code TAG has done a substantial amount of work on energy code change proposals and hasn't addressed this proposal. Representative Dammeier drew an analogy between referrals to legislative committees and Council committees. He said the public process is much more important than the appropriateness of referrals. Angie noted that work to date of the Energy Code TAG has included much public input.

Kristyn said there is precedence in this state to consider residential energy code provisions separately from commercial. However doing so will substantially confuse and cloud issues from this point on, when there is a limited amount of time to grasp the enormous task of 100 proposals. Kristyn said she feels it's a huge mistake to allow this significant change to the energy code to move forward.

Angie noted that it's crucial that the Council honor policies and procedures. She said meetings should be differentiated between public hearings and meetings not open to public comment. In addition, the Council should enforce the published agenda, because the public doesn't know what to expect if the Council "waffles." People attend meeting expecting to speak and don't attend because they don't think they can. By the same token, deadlines should be strictly enforced.

Kristyn pointed out that an Energy Code TAG member assembled data to determine that adoption of Chapter 11 of the IRC violates statute by decreasing stringency of the energy code. It's also directly counter to the request by Governor Gregoire to increase stringency of the WSEC by 30 percent.

John Chelminiak asked if the proposal is properly before the Council, since it adopts the energy code and was received after the March 1 deadline. Tim confirmed that it was received after the deadline. John then asked what the risk or consequence is of the Council adopting something not properly before it. Sandra said there may be a legal challenge which she expects would be in the form of an Administrative Procedures Act challenge to the rulemaking process. She said if the new rule is found invalid, the existing rule remains in effect.

Tim noted that he talked to Don Jordan this morning, who reminded him of a motion made at the May 7 meeting. The Council approved directing the Energy Code TAG to designate Chapters 1-10 of the energy code as IRC buildings, one-to-two-family dwellings and townhouses. Kristyn added that was part of the revised definition of "residential." So Don's comment was, "I thought we decided to go to the WSEC for residential for this cycle."

Tien Peng, Co-chair of the IRC TAG, said that TAG originally didn't consider Chapter 11 because Washington State has the WSEC. However, when the Council voted in March to move to the IECC in two years, proponents of Chapter 11 said it would give a head start to comparing the IECC with the WSEC. The IRC TAG then decided to consider Chapter 11 to ease transition to the IECC.

Kristyn noted that five years ago the Energy Code TAG noted 50 philosophical, stringency, administrative differences between the residential energy code and the WSEC. The TAG's work plan is to resume that comparison work at the beginning of next year.

Peter asked Sandra if this proposal is an energy code issue, not a residential code issue. Sandra answered that it's a policy call for the Council to make. Her analysis is that the proposal amends both codes.

Angie said the Council needs to be very careful how it handles public policy issues. She said if the Council is part way through the process, following deadlines, and then decides to change the process and accept additional information, the public comment period has to be reopened, advertising it so everyone can participate.

Representative Dammeier asked if TAGs have a formal hearing process. Kristyn said the Energy Code TAG advertises its meetings. Anyone can attend and comment and/or bring information. The TAG normally conducts a lively debate. Generally Energy Code TAG meetings are attended by 20-40 visitors. Representative Dammeier clarified his question, if TAG meetings are legal public hearings. Tim answered no. He said they're open public meetings. The only legal public hearings are the upcoming ones in September on the eastside and westside of the state. Tim said proposed rules have to be filed, within the timeframe required by law, prior to public hearings. He said the TAG process is more of a negotiated rulemaking process. Mailing lists are maintained of all interested parties. Those parties are notified of meeting locations, times and agenda topics. The goal is to reach TAG consensus. Issues lacking consensus are represented by majority and minority viewpoints.

Representative Dammeier said the key issue to him, rather than invalidating the work of the Energy Code TAG or the Residential Code TAG, is receiving public input. He said precluding public input based on a technical ruling that's unclear is counter to his legislative philosophy. Peter said there are timelines for all code change proposals going to public hearing. He asked, when all those timelines have been met and all of the proposals are before the Council, when are additional proposals no longer accepted. Peter said the Council has to make sure its actions follow legal requirements of the code established by the Legislature. He questioned whether bringing something in at this late date does that. He suggested resubmitting the Chapter 11 proposal next year.

Motion #1:

Kristyn Clayton moved to remove the suggestion to adopt Chapter 11 of the IRC as the energy code requirements from the Building, Fire and Plumbing Codes Committee recommendations. Removal is justified because this proposal violates Council history, policy and procedures for considering energy code issues. This motion includes not advancing the Chapter 11 proposal to public hearing. Jon Napier seconded the motion.

Tom Kinsman noted he spoke in support of this proposal yesterday, in the interest of moving it to public hearing, and because the people driving this in the IRC are speaking on behalf of the group of people impacted by energy code requirements. He expressed concern that the group of people driving the WSEC is very, very small, whereas the group impacted by it is enormous. That being said, Tom said he's reluctantly changing his vote because of concern about disparity with this proposal not following the proper procedure.

John Cochran asked for clarification of the motion. He asked if it is to move everything to public comment except for IRC Chapter 11. Kristyn agreed.

The question was called for. The motion was adopted by a vote of 10 aye to 1 nay.

Tom expressed concern, thinking in addition to the amendment proposed by the Fire Code TAG, there may be other problems with current language in the fire code related to existing buildings.

Motion #2:

Tom Kinsman moved to file the entire Chapter 46 of the International Fire Code. Jon Napier seconded the motion.

Tim clarified that the entire chapter will be open for public comment and discussion. Otherwise, public comment is only accepted on those sections that are proposed to be amended.

Representative Dammeier questioned broadening the public hearing process on this proposal, immediately after precluding it for the Chapter 11 proposal. Jon said the whole chapter needs to be open for review of its impact on the state. He believes Tom's motion is in the spirit with which the Fire Code TAG reviewed Chapter 46. Representative Dammeier asked for legal counsel's comment. Sandra asked if Chapter 46 is included in the materials that are being proposed to move forward in the CR-102. Tim said the CR-101 is the notice of intent to adopt the 2009 codes, including the 2009 International Fire Code. Chapter 46 is part of the IFC. So it's included in the materials, because it's part of the code being reviewed for adoption. Jon noted that the Chapter 46 amendment was proposed by the Fire Code TAG during code review rather than the public.

The question was called for. The motion was unanimously adopted.

Tim noted that Council staff will be in contact with the City of Seattle about formally requesting a local amendment review.

Mechanical, Ventilation and Energy Codes Committee

Mari Hamasaki said the MVE Committee recommends moving the AS and AM proposals on the Energy Code TAG Matrix to public hearing.

Motion #3:

Mari Hamasaki moved forwarding As Submitted and As Modified proposals on the Energy Code TAG Matrix to public hearing. Angie Homola seconded the motion.

Amendment to Motion #3:

John Cochran moved to have the previous motion only apply to those amendments that relate to the International Energy Conservation Code. Ray Allshouse seconded the motion.

John Cochran said his amendment removes 15 proposals that Kristyn previously stated were administrative and applicable to only the WSEC.

Angie clarified her statement at the May meeting that has been taken out of context. The statement, as recorded in the meeting minutes, was that only the energy code proposals dealing with the IECC would be heard from that point forward. Angie said the intent of her comment was not to exclude all energy code change proposals. Kristyn added that she was participating by phone when Angie made her motion. Kristyn noted that she added immediately after the motion, before the vote, that all code change proposals for 2009 could potentially affect the IECC adoption process and amendment preparation, depending upon what the Council adopts this year. Thus Angie and Kristyn both asked John Cochran which 15 proposals his amendment excludes from the Energy Code TAG Matrix. Kristyn spoke strongly against the amendment, noting the enormous volunteer time spent by Energy Code TAG members reviewing proposals.

John Cochran said the 15 code change proposals eliminated by his amendment to Motion #3 can be readily identified in the minority report filed by a group of lighting designers to the Energy Code TAG Matrix. He's not sure it actually is a minority report. It reports, item by item, where certain provisions are addressed in the WSEC, the IECC and IRC Chapter 11, by section and chapter. John said 15 proposals are identified in the minority matrix as not moving forward. He interprets that to mean there isn't a place in the IECC for them.

Kristyn said that's why there are existing state amendments to other codes. She said the 15 proposals identified in the minority matrix have to be considered by the Energy Code TAG, along with all the rest of the code change proposals. If the proposals don't fit in the IECC, that code has to be amended. No one anticipates Washington adopting the IECC without amendments.

Angie said she understands the minority matrix is based solely on Chapter 11 of the IRC, which the Council just chose not to move forward to public hearing. She spoke in favor of moving forward to public hearing all energy code change proposals, including the 15 that John Cochran's amendment deletes. Kristyn asked for a statement about all 15 proposals the amendment to Motion #3 deletes before the Council proceeds. Tim said there are 17 proposals in the minority matrix. Kristyn said she wants a statement about all 17 then, so the Council can make an informed vote.

John Cochran said he agrees with Angie's assessment. He asked Angie if she promotes moving everything to public hearing. Angie answered that is her preference. John Cochran withdrew his amendment. Ray also agreed.

John Chelminiak questioned which energy code change proposals will move forward to public hearing. Peter answered that all energy code change proposals recommended by the Energy Code TAG to move forward will move forward to public comment.

While supporting the public hearing process, Representative Dammeier cautioned against the Council acting too aggressively in today's economy. He said the Legislature recognized the significant impact the residential housing market has on the state's economy by delaying passage of such legislation as home warranties and clearly softening energy legislation that did pass. He noted Governor Gregoire's letter to the Council requesting a 30 percent stringency increase in the WSEC this code cycle is clearly contrary to the enacted statute because of the level of expediency called for in the Governor's request. Representative Dammeier said the Governor's request will be the subject of attorneys general opinions and potential legal action.

Kristyn noted it is extremely important that Council members enter the public hearing process informed, having read and understanding code change proposals before public testimony is received on them. Angie reminded members that it's the Council's duty to review the codes for the life, health and safety of Washington citizens. That responsibility touches on many things, including the state's economy and the quality of life of Washington citizens. The Council needs to consider all of it when deciding whether or not to adopt code change proposals. The future needs to be looked at as well, because everything will only get more expensive in the future. Angie suggested that if the housing market has such a huge impact on the state's economy, perhaps other sources of revenue should be explored.

The question was called for on Motion #3. The motion was unanimously adopted.

Economic and Regulatory Assessment Committee

Dale Wentworth, ERAC Chair, said the Committee has met once and is now awaiting a considerable amount of information. Tim said the next Committee meeting is scheduled for next Monday. Additional cost information related to some of the code change proposals is expected. He said the immediate concern is small business economic impact because that has to be filed with the proposed rule. The Committee will continue to meet through the public hearing process

to assess further economic or regulatory issues. Dale said he doesn't have a motion to make at this time.

STAFF REPORT

Tim said Bob Koch is studying the results of an audit by the State Auditor of permit fees for agricultural structures. The audit is required by SB 5120, enacted this past session. Bob will report back to the Council.

The State Auditor is also auditing the State Building Code Council account. This is a dedicated account paid for by local building permits. Tim said revenues last biennium exceeded projections. The revenue stream has been pretty consistent.

ADJOURNMENT

Lacking further business, Chairman DeVries adjourned the meeting at 11:22 a.m.